

1 AUDREY J. GERARD, ESQ., State Bar No. 209959
2 CONNER, LAWRENCE, RODNEY,
3 OLHISER & BARRETT LLP
4 829 Sonoma Avenue
5 Santa Rosa, California 95404
6 Telephone: (707) 523-0480
7 Facsimile: (707) 523-2937
8 email: agerard@CLROB.com

9
10 JENNIFER HENDRICKSON, ESQ., State Bar No. 262959
11 HENDRICKSON LAW GROUP, P.C.
12 829 Sonoma Avenue, Suite 8
13 Santa Rosa, CA 95404
14 Telephone: 707-540-6199
15 Facsimile: 707-540-6434
16 email: admin@santarosabk.com

17 Attorneys for Plaintiff/Creditor
18 MATILDA RAO

19
20 UNITED STATES BANKRUPTCY COURT
21
22 NORTHERN DISTRICT OF CALIFORNIA, SANTA ROSA DIVISION

23 In Re No. 23-10148

24 TRACY LYNN PONTE,

25 Debtor
26 COMPLAINT TO DETERMINE NON-
27 DISCHARGEABILITY OF DEBT
28 UNDER 11 USC §523(a)(4) and
§523(a)(2)(A)

MATILDA RAO,

29 Plaintiff,

vs.

TRACY LYNN PONTE,

Defendant.

/

29 Creditor MATILDA RAO (“Creditor” or “Ms. Rao”) alleges the following against Debtor

TRACY LYNN PONTE (“Debtor” or “Ms. Ponte”):

30 **JURISDICTION and VENUE**

31 1. The within action is a core proceeding brought pursuant to 11 U.S.C. §523(a)(4), 11

1 U.S.C. §523 (a)(2)(A), to determine the dischargeability of a claim owed by Debtor Tracy Lynn
2 Ponte to Creditor Matilda Rao and except such debt/claim from Ms. Ponte's discharge in the
3 above-entitled bankruptcy proceeding now pending before this court.

4 2. This Court has jurisdiction over this proceeding under 28 U.S.C. § 1334.

5 3. This case is a core proceeding and this Court has jurisdiction under Sections 28 U.S.C.
6 §157(b)(1), 157(b)(2)(A) and 157(b)(2)(1).

7 4. Venue is proper in the Northern District of California, Santa Rosa Division, under 28
8 U.S.C. 1409(a).

9 PARTIES

10 5. Ms. Rao is an individual residing in Sonoma, Sonoma County, California. Ms. Rao was the
11 Petitioner in a case brought in the Probate Division of the Sonoma County Superior Court, brought by
12 Ms. Rao against Tracy Ponte. Judgement was entered against Ms. Ponte and in favor of Ms. Rao in the
13 amount of \$240,000 (two hundred forty thousand dollars) on April 7, 2022.¹ A true and correct copy of
14 the Notice of Entry of Judgement is attached hereto as Exhibit A. On August 18, 2022 the Sonoma
15 County Superior Court Ordered Ms. Ponte to pay attorney fees to Ms. Rao in the amount of \$119,000
16 (one hundred nineteen thousand dollars). A true and correct copy of the Court's Order awarding said
17 attorney fees is attached hereto as Exhibit B. The most recent Abstract of Judgement obtained by Ms.
18 Rao on March 15, 2023 reflects that the total amount due from Debtor to Creditor on that date was
19 \$364,572.76 (three hundred sixty-four thousand five hundred seventy-two dollars and seventy-six
20 cents). A true and correct copy of said Abstract of Judgement is attached hereto as Exhibit C. Interest
21 on the judgement accrues daily in the amount of \$65.75 per day.

22 6. Ms. Ponte is an individual currently residing in or near Petaluma, Sonoma County,
23 California, and is the debtor in the bankruptcy case currently pending before the Northern District of

25 ¹Inexplicably, Ms. Ponte erroneously identifies her debt to Ms. Rao as "pending litigation" and
26 states the total is only the amount of the judgement entered, \$240,000, when she has also been ordered
to pay Ms. Rao \$119,000 as attorney fees.

1 California, Santa Rosa Division, filed on March 27, 2023.

2 **GENERAL ALLEGATIONS and RELEVANT FACTS**

3 7. Plaintiff here incorporates by reference the allegations set forth in paragraphs 1 through 6,
4 above, as though fully set forth herein.

5 8. Debtor Tracy Ponte was the designated successor trustee of the revocable living trust of her
6 father, Roger Fields. The trust terms required the successor trustee to offer the insurance agency
7 owned by Roger Fields, and operated by Mr. Fields and Ms. Rao, for sale to Ms. Rao on the terms set
8 forth in the trust instrument. Ms. Ponte did not do so, and instead she fraudulently represented to Ms.
9 Rao that Roger Fields had changed the terms of his estate plan so she was no longer to be offered the
10 agency for sale. Ms. Ponte took over the agency herself for her own profit. Approximately a year after
11 Mr. Fields' death, Ms. Rao learned that the trust had not been changed and that Ms. Ponte lied when
12 she denied that Ms. Rao had the right to purchase the business on the terms set forth in the trust. After
13 trying unsuccessfully to resolve the dispute, Ms. Rao commenced litigation in the Sonoma County
14 Superior Court as case number SPR091136. After several days of trial in the Fall of 2022, the Sonoma
15 County Superior Court made a number of factual findings in Ms. Rao's favor and entered judgement
16 against Ms. Ponte in the amount of \$240,000. The State Court trial judge also found that Ms. Rao was
17 also entitled to recover her attorney fees and costs. A true and correct copy of the Statement of
18 Decision by the Sonoma County Superior Court trial judge is attached hereto as Exhibit D. Plaintiff
19 incorporates the factual findings of the Sonoma County Superior Court set forth in the Statement of
20 Decision by reference as though fully set forth herein.

21 9. The Sonoma County Superior Court specifically found that Ms. Ponte was the trustee of the
22 trust, was aware the agency was an asset of the trust, and failed to follow the instructions in the Trust to
23 distribute it to Matilda Rao on the terms stated in the Trust. The trial court further found that Ms.
24 Ponte falsely represented to Ms. Rao that the trust had been changed, when in fact it had not. The
25 decision of the trial court specifically states the Court's finding that Ms. Ponte breached her fiduciary
26 duty to Ms. Rao, and conclusively establishes that the debt Ms. Ponte owes to Ms. Rao is the result of

1 her fraud and defalcation while acting in her fiduciary capacity as a Trustee. Contrary to the Debtor's
2 representation in her Petition that the debt to Ms. Rao arises from "pending litigation", the case is over,
3 judgement has been entered, and the time for appeal is long expired.

4 **FIRST CLAIM FOR RELIEF**
5 **(Non-dischargeability Under 11 U.S.C. §523(a)(4) and (a)(2)(A)**

6 10. Plaintiff here incorporates by reference paragraphs 1 through 9 of this Complaint as
7 though fully set forth herein.

8 11. A trustee is a fiduciary and has a duty to administer the trust according to the trust terms;
9 owes a duty of loyalty to administer the trust in the interests of the beneficiaries; to avoid conflicts of
10 interest; and not to use trust property for their own profit (California Probate Code §§ 16000, 16002,
11 16004). Here, after several days of trial, the Sonoma County Superior Court specifically found that
12 Ms. Ponte breached her fiduciary duty to Ms. Rao. It has already been adjudicated that the debt owed
13 by Ms. Ponte to Ms. Rao arises directly from her fraud and defalcation while acting in a fiduciary
14 capacity. 11 U.S.C. §523(a)(4) renders such a debt nondischargeable, and Ms. Ponte must be found
15 unable to discharge the debt she owes Ms. Rao.

16 12. WHEREFORE, Creditor MATILDA RAO prays for judgement as set forth below.

17 **PRAYER FOR RELIEF**

18 1. For judgement that Debtor Tracy Lynn Ponte be denied discharge of the debt owed to
19 Matilda Rao identified by Debtor in her Petition and any other debt of Tracy Lynn Ponte to Matilda
20 Rao arising from the matters adjudicated in Sonoma County Superior Court case number SPR091136;
21
22 2. For attorney fees and costs incurred in prosecuting this Complaint;
23
24 3. For such other and further relief as the Court may deem just and proper.

25 DATED: June 29 2023

Respectfully Submitted,

26 CONNER, LAWRENCE, RODNEY,
OLHISER & BARRETT LLP

27 By: /S/ Audrey J. Gerard
28 AUDREY J. GERARD, Attorney for
Creditor MATILDA RAO